

OGC 73-0915

25 May 1973

MEMORANDUM FOR: Director of Personnel

SUBJECT : Access to Official Personnel Files by
Employees and their Attorneys

1. Questions have developed concerning access to official personnel files by employees and their attorneys.
2. It is clear that under Civil Service Regulations the official personnel file must be made available to the employee concerned. See attached a copy of section 294.703 of Subpart G of Title 5 of the Code of Federal Regulations. Also see a copy of my memorandum of 28 February 1973 on this subject (OGC 73-0337). Mr. Houston's memorandum of 2 April 1973 (attached) records his agreement with Mr. Brownman that the Agency will give the employee and his attorney access to his file, subject to certain conditions.
3. It will be noted that section 294.703 requires that the official personnel folder be made available to the employee "or to his representative designated in writing." ^{1/} The designated representative, of course, could be an attorney of the employee's choice. It might be well to take the precaution of obtaining the employee's written designation before making the file available to the attorney or another representative. Mr. Pollock could ask the employee to sign a letter addressed to the Director of Personnel reading substantially as follows:

I authorize and request that my official personnel file in the Office of Personnel of CIA be disclosed to _____.

^{1/} It would strain common sense to interpret this language to require that access be given the employee or his designated representative, but not to both.

4. The policy spelled out in Mr. Houston's memorandum is somewhat narrower than the provisions of section 294.703. In any given instance it might appear desirable not to confine our actions to those approved by the Brownman-Houston policy. I suggest that Personnel representatives be as responsive and cooperative as possible to the employee's request. If at any time a Personnel representative thinks the employee has a reasonable request or one which might prevent or reduce criticism by the employee or his attorney, but which is outside the authority outlined in Mr. Houston's memorandum, he should recommend that the Agency meet the request. The Director of Personnel or this Office would act on the recommendation, seeking Mr. Brownman's approval when necessary.



Associate General Counsel

STA

Attachments

cc: DD/M&S

OGC:RHL:sin

Original - Addressee

1 - OGC Subj: RECORDS
1 - RHL signer
1 - Chrono

§ 294.703 Access to folder.

(a) The Official Personnel Folder of a Government employee or former Government employee shall be disclosed to him, or to his representative designated in writing, or to any other person who has the written consent of the employee or former employee or the written consent of the person who has this right under § 294.109. However, the disclosure must be in the presence of a representative of the agency having physical custody of the folder, and before disclosure the following information shall be removed from the folder:

- (1) Medical information the disclosure of which is proscribed by § 294.401;
- (2) Test material and copies of certificates and other lists of eligibles the disclosure of which is proscribed by § 294.501; and

(3) Investigative reports the disclosure of which is proscribed by § 294.601.

(b) On official request, an Official Personnel Folder may be disclosed to a Member of Congress, a representative of a Congressional committee or subcommittee, or an official of the legislative or judicial branch or of the government of the District of Columbia. However, before disclosure all material that relates to loyalty or security under Executive Order 9835 or 10450 or any other authority, and all information covered under paragraph (a) (1) through (3) of this section, shall be removed from the folder. If a specific request for loyalty or security information is made by a Congressional committee or subcommittee, or any source outside the executive branch, the request shall be forwarded to the General Counsel, U.S. Civil Service Commission, Washington, D.C. 20415, for consultation with the Department of Justice pursuant to the President's Memorandum of March 24, 1969.

(c) An Official Personnel Folder shall be disclosed to an official of the executive branch who has a need for the information in the performance of his official duties.

[34 F.R. 12426, July 30, 1969 as amended at 36 F.R. 11901, June 23, 1971]